Neutral Citation Number: [2021] EWHC 1805 (QB)

Case No: FB0BS542

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST
WINCHESTER DISTRICT REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/07/2021

Before:

HIS HONOUR JUDGE RICHARD PARKES QC
SITTING AS A JUDGE OF THE HIGH COURT

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Between:

JAMIE HODGES	**Claimant**
- and -	
CHRISTOPHER NAISH	**Defendant**

- -
- -

Gervase de Wilde (direct access) for the **Claimant**
The Defendant appeared in person

Hearing dates: 24, 25 February 2021: 12 March 2021: 1 July 2021

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Approved Judgment

ON TRIAL OF PRELIMINARY ISSUES

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 1 July 2021.

His Honour Judge Richard Parkes QC:

BACKGROUND

1. This is a slander action with a protracted and convoluted history. It involves two leading exponents of Irish dance, who worked together for some years as friends and colleagues in a business known as Fusion Fighters. The business involved both performance and teaching. They performed shows and taught students the skills of Irish dance at workshops all over the world. Their business relationship broke down in early 2019, in circumstances such that their friendship ended also.

2. By this litigation, the claimant claims damages for slanders allegedly spoken by the defendant to certain individuals in February, March and April 2019, and an injunction to prevent their repetition. The claim form was issued on 21 March 2019. The publications originally complained of were to Conor Kennedy and John McCullough, on the same occasion; to Elaine Walker; to Erin Mulcahy; and to Phillip Gaber.

3. Matters took a wrong turn with the Particulars of Claim, because counsel then instructed failed to set out the actual words alleged to have been spoken by the defendant. Instead, he pleaded their gist, in indirect speech. That was wrong: the actual words published are the essence of a claim in slander, as in libel. It is never enough to plead the gist of what was said, which can be hard to distinguish from a pleading of the meaning of the words. The relevant Practice Direction (CPR 53xPD para 2.4) provides that in a claim for slander the precise words used and the names of the persons to whom they were spoken and when must, as far as possible, be set out in the Particulars of Claim. The qualification 'as far as possible' does not mean that the gist of the words will suffice: see eg *Best v Charter Medical of England* [2002] EMLR 18, and *Rayner v Seabourne-Hawkins* [2020] EWHC 2895 (QB).

4. Given the failure to plead the actual words, it was not surprising that the natural and ordinary meanings relied on in the Particulars of Claim were little more than a repetition of the gist. Moreover, there was a largely misconceived gamut of innuendo meanings. And there were other problems. In particular, it was unclear where some of the alleged slanders were published, and it later emerged that publication would have occurred in foreign jurisdictions; there was a superfluous plea that the words complained of were false and motivated by malice; and the pleader brought in a novel cause of action (not foreshadowed in the claim form) in deceit and fraudulent misrepresentation.

5. Unfortunately, instead of applying to strike out the Particulars of Claim, the defendant (who was then represented) pleaded to them. The Defence compounded the difficulties of the case, by pleading such matters as the state of mind with which the defendant spoke such words as he admitted to having spoken, and by pleading that many of the statements made were true, without making clear in what meaning they were to be justified, and without pleading any *Lucas-Box* particulars in support.

6. The Defence was followed by a Reply. Inevitably, that further aggravated the difficulties in which the litigation found itself. Instead of focusing on the real issues, the pleadings became a tangle of irrelevancies.

7. The case had been proceeding in the Bristol District Registry. It came before HH Judge Cotter QC in Bristol. He transferred it to the Media and Communications ('MAC') List,

and on 21 May 2020 Jay J gave directions by way of pre-trial review. It appears that witness statements had been exchanged on or by 17 April 2020. The claimant had served statements by himself, Mr Kennedy, Mr McCullough and a Mr Kevin Goble, whose evidence was that the defendant had spoken to him similar words to those alleged to have been spoken to Mr Kennedy and Mr McCullough.

8. At the pre-trial review, counsel for the claimant (not then Mr de Wilde) applied orally for the trial of a preliminary issue as to the words published, the meaning of the words complained of, whether the meanings were defamatory at common law, whether the imputations were likely to cause the claimant's reputation to suffer serious harm, and whether they were allegations of fact or opinion. It appears that on that occasion the claimant's then counsel took the view that the Particulars of Claim were fit to be used at the trial, while the defendant (in my judgment rightly) disagreed. The judge at once saw the unavoidable need to vacate the trial date, and made a novel and ingenious order for a kind of defamation Scott Schedule, which was plainly designed to get round the unhappy state of the pleadings.

9. Jay J's order (so far as now material) was as follows:

> (1) The trial of this matter listed for 9 and 10 June 2020 be vacated;
>
> (2) The trial of the preliminary issues of publication, meaning, the status of the imputations as fact or expressions of opinion, whether the publications are defamatory at common law, and serious harm, be adjourned to a date to be fixed, to be heard by a Judge of the Media and Communications List in Bristol, with a time estimate of three days…
>
> (4) The parties shall, by no later than 4.30pm on 16 June 2020, identify any witness evidence from that already served (sic) upon which they rely;
>
> (5) The parties shall agree and file a consolidated table showing:
>
> (i) the words complained of (by reference to the paragraph of the Particulars of Claim),
>
> (ii) the claimant's alleged meaning (by reference to the paragraph of the Particulars of Claim),
>
> (iii) whether the Defendant admits the words complained of,
>
> (iv) the defendant's alternative version of the alleged publication (if applicable),
>
> (v) the defendant's case as to the meaning of the words complained of,
>
> (vi) the defendant's case as to fact or opinion,

(vii) whether the defendant admits the meaning is defamatory at common law,

(viii) the parties' cases on serious harm under section 1 of the Defamation Act 2013, and,

(ix) if opinion is alleged, the factual basis of that opinion,

by 4.30 on 7 July 2020;

(6) The matter shall be reserved to Jay J, if possible.

10. Thereafter, by further order of Judge Cotter QC at Bristol, on the direction of Jay J and after consultation with Warby J (then judge in charge of the MAC List), the trial of the preliminary issues was transferred to Winchester District Registry for hearing before me, as a nominated judge of the MAC List.

11. The trial of preliminary issues had been re-fixed for hearing from 10-12 November 2020, even though it was hardly more ready for hearing than the full trial would have been in June. In addition, two applications were issued on 9 October 2020 by the claimant, who by now was represented by specialist defamation counsel, acting on a direct access basis, Mr de Wilde.

12. In the event, there was no scope for listing the applications before the week of trial, having regard to listing constraints and counsel's availability. Nor was there time both to hear the applications and to deal with the trial of preliminary issues. So the trial had to be taken out of the list, and the applications were heard on Wednesday 11 November 2020.

13. The claimant sought to adduce further witness statements, primarily in order to amplify existing statements by setting out the actual words which the witnesses alleged had been spoken; and by his second application he sought an order striking out certain of the witness statements served by the defendant, including parts of the defendant's own witness statement, on the footing that they had no relevance to the issues to be determined on the hearing of the preliminary issues. Counsel then acting for the defendant rightly did not argue for their relevance for that purpose.

14. I allowed the first application, albeit on the basis that (as the defendant had long argued) the Particulars of Claim had to be amended in advance of the trial of preliminary issues. A properly pleaded case as to precisely what words were spoken, and what they were said to have meant, was in my view an inescapable precondition of a defamation claim fit to be answered with a defence and, ultimately, to go to trial. I was not prepared to conduct the trial of preliminary issues on the basis of the claimant's witness statements, nor to determine whether or not unpleaded words, simply referred to in a witness statement, had been published, or what the meaning of those words might be. I therefore ordered the claimant to serve draft Amended Particulars of Claim (APOC) by 2 December 2020, so that the claimant's case was at least prospectively set in stone. Despite that order, I retained Jay J's consolidated table identifying the parties' respective contentions on the issues in play, and directed that the claimant should make consequential changes to the table, and that the defendant should update the table in response.

15. As far as the second application was concerned, I did not strike out the relevant witness statements, given the possibility that parts of them might later become relevant if the defendant sought to amend his Defence following the determination of the preliminary issues. However, I ordered that the witness statements identified by the claimant in his application, and certain passages in the defendant's witness statement (paragraphs 9-45, 72 and 76-81), were not relevant to any pleaded issue and were not to be adduced in evidence without leave of the court.

16. The draft APOC was duly served on 2 December 2020. The draft amended pleading no longer relied on publication to Ms Mulcahy or Mr Gaber, which, as it emerged, would both have been foreign publications, but now sought to rely instead on the publication to Mr Goble, which had not previously been pleaded, although it had been presaged by his witness statements. The defendant has expressed his dissatisfaction with the claimant's abandonment of two causes of action on which, clearly, he has spent time and money. There may be consequences in costs for which he will be able to argue when this judgment is handed down.

17. The defendant served an updated version of the consolidated table on 20 January 2021, by which he admitted that each publication (if proved) was defamatory at common law, and conceded that two of the occasions of publication on which the claimant sought to rely (those to Conor Kennedy and John McCullough, and that to Kevin Goble: see [22(2)] and [22(3)] below) were, if proved, expressions of fact rather than opinion. Those concessions were sensible and realistic.

18. On 29 January 2021, on the claimant's application, I ordered that a further issue should be determined at the trial of preliminary issues, namely whether the words complained of by the claimant, as determined by the court at trial, were actionable as slanders *per se*, that is to say, without the necessity to prove special damage. I also ordered that the claimant's application to disapply the limitation period in respect of the Goble publication should be heard at the trial of preliminary issues.

19. The trial of preliminary issues was re-fixed for 24-26 February 2021. In the event, it was more convenient to break at the end of the second day and resume on 12 March. The defendant did not feel able to make any oral submissions on that occasion, so I allowed him further time to put in any written submissions that he wished to place before the court. In the event, he did so on 17 March 2021. I have read them and taken them into account. They were considered and sensible, and they suggested to me that he had perhaps received some degree of legal assistance.

DRAFT AMENDED PARTICULARS OF CLAIM

20. As I have explained, in accordance with my order of 11 November 2020, the claimant served draft amended Particulars of Claim (APOC) on 2 December 2020, by way of substitution for the former pleading. The trial of preliminary issues proceeded on the basis that although the claimant did not yet have formal permission for the amended pleading, it represented the case which he wished to advance.

21. The APOC allege three instances of publication by the defendant of words said to be defamatory of the claimant. The claimant pleads natural and ordinary meaning, serious harm to the claimant's reputation, and a claim for damages, including aggravated damages, and an injunction. The pleading throws off all the surplusage that attached to

the former version. As I have said, it also abandons the claims in respect of Ms Mulcahy and Mr Gaber.

22. The pleaded instances of publication are as follows:

(1) A telephone call by the defendant on or around 24 February 2019 to one Elaine Walker, in Germany. She ran an Irish dance business in Boblingen. It was alleged that the defendant spoke to Ms Walker these words about the claimant: "Jamie Hodges has been grooming young girls from our workshops to stay friendly with them until they reach the age of consent".

(2) A conversation during a car journey on 2 March 2019 with a Mr Conor Kennedy and a Mr John McCullough, both freelance Irish dance teachers, during which the defendant was alleged to have spoken these words about the claimant: "Jamie has been grooming a lot of young girls on the Fusion social media accounts so he could try and meet up with them for sex when they are legal … Jamie has been with hundreds of girls and because of that he's got loads of STDs and I am going to have to get in contact with them all to tell them to get tested".

(3) A telephone call on or around 4 April 2019 to Mr Kevin Goble, another freelance Irish dance teacher, during which the defendant was alleged to have spoken the following words about the claimant: "Jamie has been grooming kids through social media, so you know who you are involved with".

PUBLICATION

23. I heard evidence about the words alleged to have been spoken. So that the parties knew at the resumed hearing what words they were arguing about, I stated my conclusions on publication very shortly, in writing, on 10 March 2021. My conclusions were as follows:

(1) I heard evidence and submissions on 24 and 25 February 2021 about the issue of publication of the words complained of. It was agreed to be preferable that I should first state my conclusions about the issue of publication, and that the parties should then make further submissions on meaning, whether the words were defamatory at common law, actionability without proof of special damage, serious harm, and whether the words were statements of fact or expressions of opinion.

(2) For the benefit of the parties, these are my findings on the issue of publication. My findings, and the reasons for them, will be incorporated in my judgment after I have heard further argument.

(3) On 2 March 2019, the defendant spoke the following words about the claimant to Conor Kennedy and John McCullough during a car journey to Bristol. The words were not spoken in one continuous sequence but in the course of a wider conversation about the claimant.

"Jamie has been grooming young girls on social media so he can stay friendly with them and meet up with them for sex when they reach the age of consent … Several dance teachers have told me that parents have complained that his behaviour has been

inappropriate … He has STDs and has been sleeping with hundreds of girls. I shall probably have to tell them."

(4) On 4 April 2019, the defendant spoke these words about the claimant to Kevin Goble in the course of a telephone conversation:

"Jamie has been grooming kids through social media, so you know who you are getting involved with. Elaine Walker has complained about the Fusion Fighters workshop because Jamie has been closely involved with three girls from the camp. I received a statement that he had been inappropriate with some of her dancers."

(5) It is also alleged that the defendant spoke defamatory words about the claimant to Elaine Walker during a telephone conversation on 24 February 2019. I am unable to find, whether by inference or otherwise, that the defendant spoke the words complained of to Ms Walker. This limb of the claim therefore fails.

24. I now give my reasons for those conclusions.

25. The claimant and the defendant were, as I have said, both friends and colleagues. They worked together, both teaching and performing Irish dance, all over the world, as part of the business known as Fusion Fighters. Their business relationship, and with it their friendship, broke down in early 2019, and was brought to an end by an email from the defendant on 22 February 2019.

26. The details of their business relationship are not material, except to say that there is a business dispute as well as a personal one. The claimant maintains that he and the defendant were partners in the dance company known as Fusion Fighters, whereas the defendant insists that there was no partnership. Rather, on his account, the claimant was an instructor and an administrative assistant with the particular responsibility for booking Fusion Fighters workshops. As I understand it, there are separate proceedings about the demise of the business.

27. On the defendant's account, during 2017 and 2018 he grew increasingly concerned about aspects of what he felt to be the claimant's lack of professionalism, in particular in failing to respect the boundaries between teachers and students, and in attempting to form liaisons with young (but adult) students. (To that extent, for the sake of background, I have referred in brief summary to the effect of paragraphs of the defendant's evidence which otherwise, absent a properly pleaded substantive defence, I have ruled currently irrelevant to any pleaded issue). He went on to say that on 7 January and 17 February 2019 he was contacted by a client, Philipp Gaber, who was confused by communications that he had received from the claimant about some workshops in Austria, which Mr Gaber thought were being offered by the claimant himself rather than by Fusion Fighters. The defendant was concerned that the claimant was diverting work away from his business and causing confusion both to Mr Gaber and to another business called Kilogear as to which dance company he represented.

<u>24 February 2019: Elaine Walker</u>

28. Similarly, on his account, the defendant spoke on 19 February 2019 with Elaine Walker, a client in Germany, and heard from her that the claimant had spoken to her about booking a workshop with him rather than with Fusion Fighters. That, he said, was the

background against which he emailed the claimant on 22 February 2019 to inform him that he no longer required his services.

29. Almost immediately after his email to the claimant on 22 February 2019, in which he severed their relations, the defendant says that he received a message from Elaine Walker, to ask him if she could speak to him about some very disturbing matters that she had discovered. This was on 24 February 2019. On the telephone, she told him of 'several incidents' involving the claimant and one of her (adult) students in particular, one Eleanor Traub, who had apparently spoken about her experience, not to her but to her daughter. Ms Walker, it appears, described what had happened to Ms Traub as 'borderline criminal'. She also told him, he said, that she had arranged to book (and was now cancelling) a workshop with the claimant that appeared to be unrelated to Fusion Fighters.

30. Ms Walker then emailed the claimant on 26 February 2019 to inform him that to her great distress she had been informed of 'multiple cases of mis-abuse (sic) of power and authority towards our young adult dancers'. She had investigated the claims and had found the claimant's behaviour to be 'unsafe and borderline criminal in nature', and had concluded that he was not an appropriate person to work with her dancers. She therefore cancelled the workshop. That email, according to the defendant, was forwarded to him (by email or letter) by Ms Walker.

31. The claimant said that he had spoken to Ms Walker a few days before 26 February 2019, when Ms Walker had said how excited she was about the planned workshop that he was to run. The next he heard from her was her email of 26 February. There had been no suggestion during their conversation of any concerns about him. His relationship with Ms Walker had been 'exceptionally good'.

32. The defendant insisted that he had not given any information to Ms Walker: Ms Walker had given it, unprompted, to him.

33. That case was supported by a witness statement from Ms Walker dated 17 April 2020, in which Ms Walker referred to incidents during which the claimant had allegedly had relationships with a teacher and (adult) students (including Ms Traub) at workshops. It was on 24 February 2019, she said, that she was told by her daughter about the incident with Ms Traub, which led her to message the defendant and then to speak by telephone. She then wrote to the claimant on 26 February 2019 to cancel his forthcoming workshop. She insisted that the defendant did not raise the subject of misbehaviour by the claimant: he seemed shocked by what she had told him. Ms Walker did not, unfortunately, give evidence, so I cannot give her statement much weight.

34. There was also a signed statement from Ms Walker dated 20 January 2021, without a statement of truth, but to the same effect. In addition, there was a 'Statement for the Court' signed by Elaine Walker and dated 11 February 2021, in which she stated her wish to inform the court of the reasons for her decision not to take part in the proceedings. She referred to having been restrained by injunction in Germany, to having faced numerous legal claims and being unable to 'rule out the fact that an additional procedure could be started against me if I appear'.

35. This was not very much help. If Ms Walker had anything more of importance to say, there can have been nothing to prevent her from at least putting further evidence in a

formal witness statement, even if she was unwilling to attend court to be cross-examined on it. Her reference to German litigation was to defamation proceedings brought against her by the claimant in Stuttgart, the result of which (according to the claimant) has been that Ms Walker's allegations (whatever allegations were sued on) had been found to be false, and that damages were to be assessed in December 2020. The claimant says that Ms Walker was reprimanded by a German appellate court for lying about the German litigation in a witness statement made on 17 April 2020 in these proceedings. I doubt if this matters for present purposes. Even if it did, I would treat the claimant's evidence about the German proceedings with some caution, since in my experience non-lawyers often misunderstand what even the English courts have decided. The scope for misunderstanding is obviously greater in a foreign jurisdiction.

36. It was the claimant's case that, far from Ms Walker having contacted the defendant, the defendant called her by telephone on or around 24 February 2019, and said this to Ms Walker about him: "Jamie Hodges has been grooming young girls from our workshops to stay friendly with them until they reach the age of consent".

37. The claimant served no witness statement from Ms Walker. His position, as explained by Mr de Wilde, was that the court could infer publication of the words complained of, or substantially similar words, by the defendant to Ms Walker.

38. The invited inference of publication by the defendant to Ms Walker was based on a number of factors.

(1) The claimant relies on text messages from Ms Walker to a woman called Hannah Gray, a friend and colleague of his, on around 12 January 2020, when Ms Gray was taking part in a workshop with the claimant in Australia. In those texts she asked if anything 'out of the ordinary' had happened at the workshop, and told Ms Gray that there were 'criminal proceedings' against the claimant both in the UK and the US. According to Ms Walker, it was a very delicate situation, and she could only warn others what had happened in her school. She maintained that the claimant 'tried to sleep with three of my girls at a workshop, and then played psychological games with them so that I would not find out'. Hers was not the only school he had done it with, but it was all coming out, hence the court cases. 'This story', she said, 'is huge'. Questioned about the supposed criminal proceedings in texts from Ms Gray, who said she had experienced no problems at all with the claimant and was plainly concerned about the allegations, Ms Walker was unable or unwilling to give details. On the claimant's case, that shows (1) that Ms Walker was in contact with the defendant between February 2019 and January 2020, since there was no other plausible source for the allegations about the claimant's alleged wider wrongdoing, and (2) that the defendant must have made an allegation to her about child grooming, because that was the only reasonable inference to be drawn from the fact that the claimant's alleged misconduct had apparently led to criminal prosecution. I accept the force of (1), but I do not think that inference (2) follows at all. Misconduct with young adults (as was alleged in the case of Ms Traub) might be criminal – for example, a sexual touching for which no consent was given – but plainly would not involve child grooming.

(2) The claimant relies also on a series of messages which the defendant sent in early March 2019, which, it is argued, show that he wished to communicate information about serious wrongdoing by the claimant to third parties, but did not want to commit the substance of it to writing. This, it is suggested, echoes Elaine Walker's reluctance

to respond to Hannah Gray in their text exchange, after Ms Gray had started to question Ms Walker's allegations. The messages were as follows.

(a) There was an exchange with a man called James Devine on 1 March 2019, in which the defendant told him 'I had to let Jamie go after some crazy news I heard and some other very serious incidents so everything has been changing'. The defendant explained that James Devine was a dancer. The 'crazy news', he explained, was the message from Elaine Walker, coming on top of what he had learned about Kilogear and Jamie Hodges booking workshops with Fusion Fighters' clients.

(b) Three people (Aisling Casey, Emily Delora and Blaze Montgomery) received text messages from the defendant on 4 or 5 March 2019 in which he said that he wanted a chat. He explained these texts in evidence. He said that he had wanted to talk to Aisling Casey because he had received a call from Kilogear, and learned that the claimant had been working with them since the previous summer, pretending (so it was said) to be doing so on behalf of Fusion Fighters, and he wanted to discuss allegations that the claimant was contacting Fusion Fighters' clients to book workshops. He wanted to talk to Emily Delora about a matter to do with Fusion Fighters' social media. He accepted that he also wanted to talk to Blaze Montgomery, but I do not think that he mentioned the subject matter.

(c) According to Maureen O'Malley, the defendant contacted her (it is not clear exactly when, but it is likely to have been in early March 2019) and asked to speak to her, saying that she should be careful about hiring the claimant because of allegations made against him by other teachers, and that it would be in her best interests 'to not have him around the young children in (her) school'. He admitted having called Ms O'Malley about a workshop that he thought he was going to lose. He accepted that he had mentioned to her the Elaine Walker message of 26 February to the claimant, saying that he had received a complaint from Ms Walker about an incident that she said was 'borderline criminal'. He did not, however, say that he posed a risk to young children. With hindsight, he felt that perhaps he should not have shared the Walker letter with Ms O'Malley.

(d) On 4 March 2019 the defendant texted Karl Drake, asking if they could chat and telling him that he thought Mr Drake should know what had been happening. He said 'Believe me, no-one will be working with Jamie after they know what he's done'. The defendant explained what he had said in terms of his concern at the claimant stealing his intellectual property. Cross-examined to the effect that this text did not look as if it was concerned with intellectual property, he answered 'I can see how it sounds, but Irish dance is a small world and he was planning this with my brand. I was worried he was going to take it from me'. Mr de Wilde suggested that was not a viable explanation for the suggestion that what had happened was career-ending, to which the defendant responded that it was definitely out of his frustration at the time. He had been sick for 3 weeks, and it sounded as if he had exaggerated.

(e) On 7 March 2019, the defendant texted Rosey Jackson asking if they could have a chat. She asked if it was urgent. He texted back 'It's (sic) urgency really depends on whether you have plans to work with Jamie as I've a few things I'd need to fill you in on (facepalm emoji) He broke some very serious codes of conduct so I had

to disassociate with him'. Ms Jackson responded that she did not want to be involved in business disputes, to which the defendant replied that he was not disclosing any detail to people: he did not want to be involved with 'legal things' either.

That, Mr de Wilde argued, showed that he was aware that legal liability might attach to any written communications. The defendant explained that 'It was more in response to what she said, saying she did not want to be involved in business disputes'.

The defendant accepted that the use of the 'face palm' emoji (which showed a person with palm pressed to face) suggested something shocking and upsetting. He explained it in terms of the claimant having broken the codes of conduct, and having attacked his brand. He had been prepared to tell her about serious wrongdoing by the claimant, he accepted, but he did not share the details. Rosey Jackson was a vendor of Irish dance goods and had been one of his sponsors, and he wanted to tell her what had happened with Kilogear, in the hope of having a sympathetic person to talk to.

(f) On 9 June 2019, the claimant received a text from Liam O'Sullivan, who told him that he had just spoken to the defendant and wanted to update him. The defendant accepted that he had called Mr O'Sullivan: he was an old friend, but he did not share information with him. He was unable to say why Mr O'Sullivan should want to 'update' the claimant after speaking to him.

39. In short, the defendant accepts that he contacted a number of people after he wrote to the claimant on 22 February 2019, because they were clients of the workshops, sponsors and other people that the claimant had been working with, and he wanted to mitigate any damage to the brand of Fusion Fighters. He felt that he had a duty to tell people whom he trusted about his concerns. The reason that he wanted to speak to people rather than put matters into writing was that it was easier to call. He did not mention 'grooming' to any of them.

40. However, I have concluded, for reasons given below, that both in the car conversation with Conor Kennedy and John McCullough on 2 March 2019, and in the telephone conversation with Kevin Goble on 4 April 2019, the defendant did accuse the claimant of having 'groomed' 'kids' or 'young girls'.

41. In that context, given the exchange which the defendant admits having had with Ms Walker, even if (as he claims) she initiated it, and given such admitted usages as the 'facepalm' emoji (which plainly denotes embarrassment at shocking or embarrassing behaviour) and the suggestion that no-one would work with the claimant once they knew what he had done, it seems to me highly likely that in these various conversations the defendant did indeed make allegations of sexual misconduct on the claimant's part.

42. It seems likely to me also that the defendant told Ms O'Malley that it would be in her best interests not to have the claimant around the young children at her school.

43. I conclude also that it was because the defendant proposed to pass on serious allegations about the claimant that he put little in writing, but preferred to text his contacts asking

if they could speak. I found the defendant's attempts to explain the texts and conversations in terms solely of his concerns for his business limp and unconvincing.

44. The court is asked by the claimant to conclude from those exchanges that on 24 February 2019 the defendant made an allegation of child grooming to Ms Walker, and moreover that in doing so he used the pleaded words referred to at [21(1)] above, namely 'Jamie Hodges has been grooming young girls from our workshops to stay friendly with them until they reach the age of consent'.

45. As I have found, the defendant did allege to Mr Kennedy, Mr McCullough and Mr Goble that the claimant was involved in the grooming of young girls. In my judgment, he was prepared to make allegations of sexual misconduct by the claimant to a number of others. I think it likely that he will have discussed similar matters with Ms Walker, whichever of the two raised the subject first. I am not concerned with the truth or otherwise of these allegations and counter-allegations. But I cannot infer from all the circumstances (whether he called Ms Walker or she called him) that he accused the claimant to Ms Walker of grooming young girls under the age of consent. That is not an inference which flows from her reference to borderline criminal conduct (which relates in any event to a young but adult 18 year old). Still less can I infer that the defendant used the particular words which are pleaded.

46. This cause of action cannot, therefore, stand.

<u>Conor Kennedy and John McCullough: the car conversation, 2 March 2019.</u>

47. It is common ground that the defendant, Mr Kennedy and Mr McCullough had a conversation together during a car journey on 2 March 2019. Mr Kennedy was driving. He and Mr McCullough were driving to a rehearsal in Bristol. They had gone to pick up the defendant from his house, and the journey took around 20 minutes. That much is not in dispute.

48. It is also common ground that the words complained of were part of a longer conversation. Both Mr Kennedy and Mr McCullough accepted readily that the words which they particularly recalled having been spoken were not spoken in a single sentence: all the words that they recalled were spoken, but during different parts of a longer conversation.

49. The defendant served a document headed "The Car Conversation words: to my fullest and best recollection of the full conversation". This was intended to set out the entirety, so far as he could recall it, of the words which he used during the car journey.

50. The Car Conversation document did not take the form of a witness statement, and had no statement of truth, but the defendant was no longer represented at the trial of preliminary issue, and Mr de Wilde very fairly took no point on it, so I allowed the defendant to treat it as a witness statement when he came to give evidence, so that he was able to confirm its truth. It thus stood as part of his evidence in chief.

51. I now set it out in full, without corrections, and without changing the defendant's use of 'C' to denote the claimant and 'D' for himself, which unavoidably makes the account somewhat stilted:

"1. I have had so much on my mind this past month, it has been a nightmare and I got very sick because of it. I even lost my voice at one point for almost a week. I need to explain what has been going on and why the C is no longer working for the FF Workshops."

2. I recently found out from several other brands and clients that the C has been acting falsely on behalf as a business partner for Fusion Fighters to secure agreements for the benefit his own brand. On occasion this was done by telling them that the D was not interested in their propositions, without speaking to D first. The C was then creating his own plans with them as well as his own workshops with the D existing clients. Specifically telling all of them there was no need to talk to the D about it.

3. I recently received several serious complaints about the C that were extremely disturbing. The complaints were consistent to the behaviour I had either witnessed or been made aware of previously, but this was far more troubling.

4. One of the complaints had come from the president of the World Irish Dance Association Elaine Walker, who mentioned how disgusted she was. Ms. Walker said there were two minor incidents but considered the third incident borderline criminal behaviour and shocking, which has left one of the students traumatised, so I was completely stunned by this and didn't know what to say or do. The fact that the C was in his 30's also really didn't sit well with her.

5. I was already very concerned that the C has been completely disregarding my concerns about sleeping with and abusing his position as an instructor. The C was completely pushing the boundaries with his role as a mentor and instructor by having intimate relationships with students, cast members and councillors at CRC, who are easily influenced considering they have been trustfully placed into the C care and look up to him.

6. There was also that incident at the worlds in Dublin, but this seems that it is a lot more serious. These disturbing complaints and allegations by parents and teachers can't be ignored.

7. I am also not the only person to have noticed that the age of the students the C was communicating with were getting younger. I personally know of several 18 and 19 year old students the C had or attempted to have relationships with.

8. I have also been made aware from a dance teacher that the C has tried to have sex with multiple students of hers in the same evening, which is also something I have witnessed in my own experience too.

9. I was already extremely concerned about the C complete disregard for the boundaries with forming relationships with students as an instructor. The C clearly cannot control his impulses and it was also clear from the multiple relationships forming that the C liked girls who were in their late teens and early 20's.

10.The C flirted with students and seemed to be working his way through his options to form sexual relationships with the student and cast members through social media before, during and after the workshops. There was also a clear pattern emerging of the C telling them not to tell anyone.

11. I have witnessed myself and heard from other students that the C was also using his personal SnapChat account to communicate with younger dancers 16-18 from the Fusion Fighters Workshops. Not only was the C use of SnapChat becoming obsessive and distracting him from his jobs, but the messages did not seem to be workshop related which to me was alarming and unnecessary.

12. The C had consistently disregarded my concerns again and again with his reckless compulsions and boastings about how many girls he has on the go.

13. After these latest complaints that mentioned 'borderline criminal behaviour', it naturally put me on the highest alert for my students. I am worried these complaints will be found out by the Irish Dance Community and what people with think.

14. This does makes me seriously concerned about the possibility of the C going lower than 18 and the significant damage and lasting effects this would have on the brand.

15. As the director of Fusion Fighters in an environment predominantly teenagers, I also have a legitimate concern for the safety of all my students and feel a responsibility to protect them, it seems to me that the C has no concerns about the implications and the reputation of Fusion Fighters or others involved.

16. It is my opinion and observation that the C intentions was to have sex again with the students he was messaging when they meet at Irish Dance Events.

17. Considering that there has been three complaints from one dance school, I can't help but wonder if there are potentially other incidents elsewhere that I might not be aware of. It's not out of the question that the students who came forward or who were revealed, are only a percentage.

18. I also found it concerning to find out the C stayed at students houses while on tour when he didn't need to.

19. I found multiple pages of evidence on the ffcreatenothate @gmail.com Google history that shows on a map where the search was made, so I knew which searches the C made. For example when he was in China visiting his brother. I knew those had to be him as he's the only other person who has access, plus it would show me his location in Bristol. The searches told me the C was searching some very disturbing things as well as multiple searches about STD's.

20. The C could have slept with as many as a hundred women, possibly more.

21. I am very concerned about this as he has told me before about him contracting STD's, and I don't know what to do with the google search

> information as it was definitely him who made them. I am unsure if l have a duty to contact the C previous sexual partners in light of this.
>
> 22. I was also made aware from several people that the C brother Mitchell Hodges was fired for assaulting his girlfriend, I was told the girlfriend stayed with Mitchell but despite this but he was arrested."

52. Both Conor Kennedy and John McCullough were shown the defendant's Car Conversation document, and were given time to read it. Conor Kennedy said that there was nothing that he disagreed with in the account, which he regarded as quite accurate. However, it omitted the parts that concerned him. John McCullough could not recall the first paragraph of the document, but accepted that a lot of the points covered in the document were made during the conversation. However, it was his evidence, like Mr Kennedy's, that some words were omitted from the document, including in particular the allegation of grooming.

53. Mr Kennedy's account in his original witness statement, dated 9 April 2020, was that the defendant told him and Mr McCullough that he had to end his professional relationship with the claimant. He said that the claimant had been grooming young girls from dance workshops and dance camps that they had visited, and making an effort to be friendly with them until they reached the age of consent for sex. The claimant would then go to meet the girls and try to have sex with them. The defendant told them that dance teachers at the dance schools had approached him to say that they had received complaints from parents about the claimant's "inappropriate" behaviour. He also said that he knew that the claimant had sexually transmitted diseases, and felt compelled to inform the 200 plus girls that the claimant had slept with, for their own benefit.

54. In his updated witness statement (7 October 2020), Mr Kennedy explained that he had not realised the importance of stating as accurately as possible the precise words which the defendant used. He had tried to recall them as accurately as possible, and had now set them out more fully, giving as close to a word for word account as I could. The words used were as follows:

> "Jamie has been grooming young girls from our workshops to stay friendly with them until they reach the age of consent … I know Jamie has STDs and I should probably tell the hundreds of girls he's been sleeping with … I have had several dance teachers speak to me that parents have complained to them about Jamie's inappropriate behaviour with students".

55. I note that in his second witness statement, Mr Kennedy said that those were the words spoken, 'or words to that effect'. However, I asked him to give an oral account of what transpired as evidence in chief, and it was clear that he was attempting to recall and state the actual words used, rather than words to the effect of those used. Indeed, he confirmed to me that this was the case.

56. He also explained in oral evidence that the reason that the defendant gave for the discussion about the claimant was that there had been allegations about his behaviour involving under-age girls which had arisen from different workshops in different places. He summed matters up by saying that the defendant had said that the claimant

had been grooming under-age girls, knew that he had STDs, and was sleeping with hundreds of girls despite it.

57. Mr Kennedy said that his immediate reaction to the defendant's allegations was stunned silence. He did not know the full truth of matters and did not want to say anything. He had been a friend of the claimant's for around 15 years, and he had worked closely with the defendant since 2015, and had come to look on him also as a friend. Because the defendant was older than him and had given him work with Fusion Fighters, he looked up to him and respected him. Mr Kennedy also knew that the claimant and the defendant had worked closely together for many years and had travelled internationally together, spending a lot of time with each other. The defendant, he felt, knew the claimant well, and was well-placed to know about his attitude to his students, and about any relationships that he might have had with them. When the defendant spoke the words about the claimant, Mr Kennedy felt that if anyone had real knowledge of what the claimant had done, it would be the defendant, who seemed adamant about the truth of what he had said.

58. He said nothing to the defendant in response at the time, but afterwards sat and talked to John McCullough. They discussed what they had heard and whether it was serious, and whether the claimant ought to hear about it. They decided that they should tell him, both because he needed to hear what had been said about him and because they wanted to hear his side. They met him the next day: it had been a horrible conversation, because it had been very difficult to tell him about the things that had been said about him.

59. John McCullough had not known Jamie Hodges as long as Conor Kennedy had. He met both of them during 2016. He described the claimant as very driven, but a 'nice guy' who was easy to get on with, and he regarded him as a friend. He saw the claimant as a respected person in the Irish dance world, and as someone who was always very professional as a teacher, particularly with young people. He had been introduced to the defendant by Conor Kennedy in 2016. The defendant was older than he was, he also was well respected in the Irish dance scene, and Mr McCullough regarded him as a good friend. The defendant had effectively been his employer when he performed with him, but his relationship with the defendant felt like one with a friend whom he happened to work with. He knew that the claimant and the defendant worked together teaching workshops and putting on performances, and that at the time of the journey in March 2019 their relationship had deteriorated. He assumed that since they had spent so much time working and travelling together, they knew one another very well and knew a great deal about each other's lives.

60. On the account of the conversation in the car which John McCullough gave in his original witness statement, dated 8 April 2020, Chris Naish had told him and Conor Kennedy that throughout the course of the Fusion Fighters partnership, Jamie Hodges had been sending messages through various forms of social media to young girls who had attended Fusion Fighters' dance camps and workshops. He suggested that Jamie Hodges had been grooming the girls with the intention of meeting up with them once they were of legal age. He also told them that he had been approached by several dance teachers with concerns from parents of young dancers that Jamie's behaviour in workshops had been inappropriate, and that Jamie had been with hundreds of sexual partners, as a result of which he had contracted various sexually transmitted diseases. The defendant said he feared he would have to contact all the partners so that they could be tested.

61. In his second witness statement, dated 7 October 2020, Mr McCullough explained that he had been told how important it was that he gave a word for word account of what it had been that the defendant said to him about the claimant, and that he had been asked to give the best account that he could of what he said. He said that the defendant spoke words, or words to the effect that:

> "Jamie has been grooming a lot of young girls on the Fusion social media accounts so he could try and meet up with them for sex when they are legal … I've had several teachers approach me with concerns from parents of young dancers that Jamie's behaviour in workshops was inappropriate …. Jamie has been with hundreds of girls and because of that he's got loads of STDs and I am going to have to get in contact with them all to tell them to get tested."

62. Like Mr Kennedy, Mr McCullough referred to 'words to the effect that…'. However, he told the court that the words in his witness statement were his attempt to state the actual words used. In oral evidence, his summary of the essence of what he remembered the defendant saying was that Jamie Hodges had been grooming young girls to meet up and have sex when of legal age, that teachers and parents were concerned that Jamie's behaviour had been inappropriate, and that Jamie had STDs and he feared he would have to contact all the girls to tell them.

63. He said that he was shocked and confused by what the defendant said: he saw him as Jamie Hodges' best friend, and he could not believe that he would be saying such things if they were not true. He did not say anything at the time because he was so taken aback at what he had said. He did not think that Jamie Hodges was the sort of person to be involved in such things. But, he said, given the fact that they worked so much with young people, behaviour of the kind that the defendant was alleging could ruin a person's personal and professional life. Teachers of young people are trusted to look after them and to guard their best interests. What the defendant said that the claimant had done would have been a complete breach of that responsibility. It could not have been a more serious accusation: it was career-ending. Moreover, the defendant had said that the concerns were not only his own: they were shared by other teachers who had worked with the claimant.

64. When they got out of the car on arrival in Bristol, Mr McCullough discussed what they had been told with Conor Kennedy. They were both worried that it might be true. Mr McCullough felt that he had to raise it with the claimant, because of the seriousness of the accusation and its potential consequences, and he wanted to hear the claimant's account. He and Mr Kennedy did tell the claimant about the conversation the following day.

65. The claimant's evidence, which is relevant as showing consistency in the men's accounts, was that both Conor Kennedy and John McCullough spoke to him on the evening after the car journey. They were very tense. Conor Kennedy asked if he was still working with the defendant. He replied that he had not spoken to him for a week or so, and Conor Kennedy said "It's bad, Jamie, it's really bad". He asked what was going on, and John McCullough could not look at him. They informed him that the defendant had told them that he was grooming under-age girls until they were over the age of consent, and then meeting them for sex when they became legal. He had said

that several teachers had received complaints about him from parents, and that the claimant had slept with hundreds of girls, and that he had STDs, which made the defendant feel that he had to tell the girls. That was the essence of the conversation. He was so taken aback that he did not know how long he took to respond, but of course he denied it: it was a complete and fabricated lie, he said.

66. When the defendant came to give evidence, Mr de Wilde suggested to him that his written account of the car conversation was legalistic, formal and wholly artificial. The defendant insisted that it represented his completely honest recollection. He had wanted to explain to Conor Kennedy and John McCullough why he was not working with the claimant any more.

67. He agreed that he had spoken about how the claimant had flirted with students and used social media to communicate with younger girls in the 16-18 bracket with a view to having sex with them. He accepted that he had told Mr Kennedy and Mr McCullough that Hodges had been messaging students on social media and had been meeting up with them to have sex with them. The youngest he knew of had been 18. He had witnessed the claimant messaging students who were younger, and he was concerned that he might 'go younger than 18', and had 'witnessed him messaging girls of 16-18 and younger girls'. He had not, he said, seen anything 'inappropriate'. He hoped that the claimant would not be 'inappropriate' with younger girls. His concern was with the claimant 'going younger than 18', as he put it. He accepted that on his account the claimant's behaviour had been sinister, especially in the light of what Elaine Walker had said to him about 'borderline criminal' activity. However, he had not used the word 'grooming', and he insisted that Conor Kennedy, John McCullough and Kevin Goble (who gave evidence to the same effect) were either lying or had misunderstood what he said. His recollection was that he had not spoken in that way at all.

68. The defendant made the point that the accounts of Conor Kennedy and John McCullough were similar, and suggested that they had put their heads together when preparing their witness statements. Of course, if both men were telling the truth, one would expect their recollection to be similar. Moreover, it would be absurd to suppose that they had not discussed the conversation together since it took place, which is likely to produce a degree of congruence. However, he pointed out that both men made the same mistake in their witness statements of dating the conversation to 2 February 2019 rather than 2 March. That is a fair point to make, but it does not seem to me to undermine their accounts. Whether it is a mistake which they made themselves, flowing from discussions together, or whether it was made by whichever lawyer produced the draft statements, and then missed by them, it is not material. It is common ground that the date is wrong.

69. I accept that there is a strong element of artificiality about these attempts by witnesses to reconstruct words spoken two years ago. That applies particularly to the defendant's 'Car Conversation', but also, albeit to a lesser degree, to the recollections of Mr Kennedy and Mr McCullough, who were not asked until 18 months after the event what actual words had been spoken. The court must do the best it can with the evidence that it has, and is bound to be sceptical about the ability of any witness to recall a conversation so long after the event.

70. However, there are pointers that assist me.

71. One is that the claimant's evidence about what he was told by the two men the evening after the car conversation (if I accept, as I do, that his account was a truthful one) chimes with the evidence which both men gave to me. Moreover, the account which he was given is not something that he would be likely to forget.

72. Another particularly striking aspect of the recollection of both Mr Kennedy and Mr McCullough is that the defendant used the expression 'grooming', in the context of girls who were below the age of consent. It is striking also that the defendant admits that their recollection is correct about the other allegations that he made – that he had been contacted by teachers and parents who were concerned about the claimant's behaviour, that he had slept with a great many girls, and that the claimant had sexually transmitted diseases, which he felt he should warn the girls about. All those matters were accepted by him in his Car Conversation account. Yet he adamantly refused to accept that he used the word 'grooming' or referred to under-age girls. There seems to me to be very little between what the defendant admits to having said – that the claimant was using social media to communicate with younger girls in the 16-18 bracket with a view to having sex with them – and the evidence of Mr Kennedy and Mr McCullough, and I prefer their accounts. They were firm in their insistence on what had been said, and they had plainly been shocked and troubled by the defendant's words. It is not surprising that the conversation struck them so forcibly. In my judgment, both men were doing their best to give a truthful account of an episode which they had found awkward and embarrassing. I believe that I can safely rely on their evidence. Their accounts are of course slightly different, but not to any significant extent.

73. By contrast, I found the defendant's denial that he had even used the word 'grooming' (even though that was what his admitted allegations amounted to, albeit with girls of 16-18) troubling and unconvincing. He was plainly expressing concerns during the conversation about the claimant showing interest in and contacting younger girls, and there is no obvious reason why his concerns about the claimant's behaviour should have stopped so firmly at the age of 16.

74. For those reasons, I find that the words spoken by the defendant to Mr Kennedy and Mr McCullough are as set out at [23(3)] above, namely

> "Jamie has been grooming young girls on social media so he can stay friendly with them and meet up with them for sex when they reach the age of consent … Several dance teachers have told me that parents have complained that his behaviour has been inappropriate … He has STDs and has been sleeping with hundreds of girls. I shall probably have to tell them."

Kevin Goble, 4 April 2019

75. Kevin Goble is an Irish dance performer and instructor. His evidence was that the defendant telephoned him on 4 April 2019 and spoke to him about the reasons for the end of the defendant's business relationship with the claimant. That much is common ground. The call lasted perhaps 10 minutes. He said that the defendant had wanted to inform him of the sort of person he would be working with if he worked with the claimant in the future. He told Mr Goble that Elaine Walker had complained about the claimant being closely involved with three girls at a Fusion Fighters camp, and that he had been told that the claimant had been 'inappropriate' with some of Ms Walker's

dancers. He also told Mr Goble that the claimant had "groomed kids through social media". The age of the girls was not mentioned, he said, but it was "heavily implied" that they were under age. The word 'groom' was used a number of times.

76. In his first witness statement, Mr Goble (like Conor Kennedy and John McCullough) did not specify the precise words spoken, with the exception of the words "groomed kids through social media".

77. In his second statement, made on 7 October 2020, he explained that the claimant was a good friend of his, and that they had met through the defendant in February 2017. The claimant was very well known and respected in the Irish dance world. Mr Goble had worked with the defendant since 2015, and they also became close friends. He was aware that the claimant and the defendant had worked very closely together on Fusion Fighters, and had also been very close friends.

78. He explained that he had not appreciated when he made his first statement the importance of identifying the exact words, and the closest that he could get to a word for word account of the conversation was this, as set out in his second statement:

> "Jamie has been grooming kids through social media, so you know who you are getting involved with. … Elaine Walker has put in a complaint to WIDA about the Fusion Fighters workshop because has (sic) been closely involved with three girls from the camp. I received a statement that he had been inappropriate with some of her dancers."

79. He distinctly remembered the defendant using the word 'groom' or 'grooming' about the claimant several times. He found that horrifying, because it made him think that the claimant was guilty of deeply inappropriate or even criminal behaviour towards young students, in relation to whom he was in a position of trust. He listened to the defendant in a state of shock, and was taken aback by what he heard, particularly because the allegations came from someone who spent almost all his time with the claimant. He did not contradict the defendant, and just listened to what he had to say, even though, because he knew that the two men's business relationship was splitting up, he found the allegations questionable in view of the timing.

80. The defendant's evidence was that he regarded Mr Goble as a friend and colleague. He accepted that he called Mr Goble to discuss the end of his working relationship with the claimant, but denied mentioning 'grooming'. He said that Mr Goble had been more talkative than Conor Kennedy and John McCullough but gave the impression that he did not want to be involved.

81. Mr Goble felt that he had to talk to the claimant about what he had heard, so called him within an hour. His view of the claimant was affected by what he had heard, particularly given that the two men had been so close. He thought that his relationship with the claimant was unchanged, but the allegations made him question the claimant's ethics and his own friendship with him. He had spoken to him rather less than he used to do before March 2019. Given the seriousness of the allegations, he could not regard the claimant as fully vindicated until a judge ruled that they were false.

82. The claimant confirmed that Kevin Goble had rung him and said he had just spoken to the defendant. On Mr Goble's account, the defendant had rung him to let him know who he was working with, that the claimant was grooming young girls, and that Ms Walker had complained about him to WIDA. He was upset, but by this stage was becoming more hardened to such reports and reacted rather more quickly. He said it was untrue, that he was not the first person the defendant had said this to, and he was sorry that Mr Goble had to hear it. At the time, he was at an airport, about to go through security, and what stuck in his mind was the grooming and the reference to Elaine Walker.

83. The claimant asked Mr Goble if he would give his solicitors a summary of what the defendant had told him. He did so. On 5 April 2019 he provided the claimant's solicitors with a summary of the evidence that he was able to give. The email, which he copied to the claimant, read (so far as material) as follows:

> "As Jamie previously said, I have worked a Workshop teacher with Fusion Fighters #createnothate campaign and worked in some corporate routines. I, too, was also on the phone to Chris yesterday. As I haven't spoken to him before all this started he was unaware that I was aware of the situation.
>
> During this phone call, as well as talking about future prospects with Fusion Fighters, he did go on to mention about Jamie in a quite slanderous manner. He said these things:
>
> "Elaine (WDA) put in a complaint to WIDA about the Fusion Fighters workshop because Jamie had been closely involved with 3 girls from the camp." "I received a statement claiming that Jamie had been inappropriate with some of her dancers."
>
> He didn't elaborate on who but he said that Jamie "groomed kids through social media." Although he never mentioned the age of these dancers it was heavily implied that he was saying they were underage. He used the word "groom" a number of times."

84. Having heard the defendant and Mr Goble, I prefer Mr Goble's evidence, for very much the same reasons as I accepted the evidence of Conor Kennedy and John McCullough. Like them, he seemed to me to be a decent young man with no axe to grind, who found himself through no wish of his own in the middle of an embarrassing dispute between two men, both of whom had been his friends. In my judgment he was doing his honest best to recall exactly what was said to him. By contrast, I was again unpersuaded by the defendant's denials of using the word 'grooming', a striking word that any friend of the claimant would be likely to remember if it was spoken of him.

85. Despite the difficulties for Mr Goble in trying to remember the words that were spoken in April 2019, I do conclude that it is more likely than not that the defendant used the words which Mr Goble recalled, particularly in the light of his email to the claimant's solicitors the very next day. What I find is that the defendant said to him:

> "Jamie has been grooming kids through social media, so you know who you are getting involved with. Elaine Walker has

> complained about the Fusion Fighters workshop because Jamie has been closely involved with three girls from the camp. I received a statement that he had been inappropriate with some of her dancers."

86. However, only the first sentence of those words is pleaded in the APOC (less the word 'getting', which is immaterial).

DISAPPLICATION OF LIMITATION PERIOD

87. The publication to Mr Goble on 4 April 2019 was not complained of in the claim form nor the original Particulars of Claim.

88. The relevant limitation period is set by s4A, Limitation Act 1980, which provides that no action for defamation or malicious falsehood shall be brought after the expiration of one year from the date on which the cause of action accrued. The cause of action in respect of the words spoken to Mr Goble accrued on 4 April 2019, so expired on 4 April 2020.

89. The claimant issued an application on 12 February 2021, asking the court to disapply s4A in accordance with its power under s32A of the Act. The application was heard at the start of the trial of preliminary issues on 24 February 2021.

90. I allowed the claimant's application, and disapplied the limitation period for the Goble publication. I now state my reasons for that decision.

91. So far as is material, s32A is as follows:

> 32A - Discretionary exclusion of time limit for actions for defamation or malicious falsehood
>
> (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—
>
> (a) the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and
>
> (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,
>
> the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.
>
> (2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—
>
> (a) the length of, and the reasons for, the delay on the part of the plaintiff;
>
> (b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period mentioned in section 4A—

(i) the date on which any such facts did become known to him, and

(ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action; and

(c) the extent to which, having regard to the delay, relevant evidence is likely—

(i) to be unavailable, or

(ii) to be less cogent than if the action had been brought within the period mentioned in section 4A.

92. The leading authority on s32A remains *Steedman v BBC* [2001] EWCA Civ 1534. *Steedman* was a somewhat unmeritorious case in which no complaint at all was made about a defamatory broadcast for fourteen months, even though the claimant had known of it since the broadcast took place. No explanation was given for the delay: there was not even any evidence of the instructions given by the claimants to their solicitors.

93. The court stated that though the discretion afforded by s32A was largely unfettered, requiring the court to balance any prejudice to the parties in allowing the claim to proceed or not, the court should exercise that discretion in accordance with a number of general principles enunciated in the personal injury context by Lord Diplock in *Thompson v Brown* [1981] 1 WLR 744. They were that

(1) a direction under the section was always highly prejudicial to the defendant;

(2) the expiry of the limitation period was always in some degree prejudicial to the claimant;

(3) the extent of the prejudice would depend on the strength or otherwise of the claim and/or defence;

(4) even where the claimant had, if the action was not allowed to proceed, a cast iron case against his solicitor, some prejudice, albeit it might be minor, would be suffered by the claimant;

(5) in exercising its discretion the court had not only to consider the respective degrees of prejudice to the claimant and the defendant, but also the specific circumstances set out in s33(3) and all other circumstances; and

(6) the court must then consider whether it was equitable to allow the action to proceed.

94. Brooke LJ added that there was a need to take into account the policy underlying the reduction of the limitation period in defamation to one year, which emphasised the importance of pursuing speedy vindication in libel and slander.

95. That policy consideration underlay the reasoning of the Court of Appeal in *Bewry v Reed Elsevier UK Ltd* [2014] EWCA Civ 1411. In that case, there had been internet publication of a LexisNexis case note both on LexisNexis and a related site run by CCI, another Reed company. An automatically generated ‘snippet’ of the case note was put

up on a publicly available part of the CCI site. The claimant did not see the 'snippet' until over a year had passed after the note was first put up, but regarded it as defamatory of him and complained. Both it and the case note were taken down promptly. The claim was not commenced until over 11 months after the claimant had been in possession of all the necessary facts; and the application to disapply the limitation period, with a view to enabling the claimant to complain of publication over a longer period, was not made for a further 7 months. Without disapplication, he was confined to a short period during which there had been very limited publication.

96. The judge had granted the claimant's application, but the Court of Appeal allowed the defendants' appeal. The court confirmed that the onus is on the claimant to make out his case and to give an explanation for his delay, including delay after the issue of proceedings. Ignorance of the limitation period is no answer: what matters is that the claimant should pursue his claim promptly, irrespective of the limitation period, because not to do so is inconsistent with a genuine wish to pursue vindication of his character promptly and vigorously.

97. The claimant's evidence in this case shows a very different course of events from that in *Bewry*. When in February and March 2019 the claimant learned about the alleged publications to Mr Kennedy and Mr McCullough, to Ms Walker, and to Mr Gaber and Ms Mulcahy, he at once instructed solicitors. The original Particulars of Claim were filed and served on 4 April 2019.

98. On that very day, 4 April 2019, Mr Goble told the claimant about the telephone call which he had just received from the defendant.

99. The claimant asked him if he would be prepared to give a witness statement in the proceedings. Mr Goble agreed, and on 5 April 2019 provided the claimant's solicitors with a summary of the evidence that he was able to give, which I have set out at [83] above.

100. The claimant did not then know, and thinks that his lawyers cannot have known either, that each instance of publication of defamatory words is a separate cause of action.

101. However, he clearly wanted to rely on the evidence of Mr Goble. He spoke to his lawyers about including the Goble publication, but both counsel and solicitors said that Mr Goble's evidence should go in at the stage of exchange of witness statements. When, following service of the Defence on 20 May 2019, a Reply was under preparation, he emailed his solicitor asking him to send counsel Mr Goble's evidence 'to include'.

102. After he received the draft Reply on 21 June 2019, he repeated his concern about Mr Goble's evidence and asked whether it should be referred to. His concern was met by explanations that statements of case should not plead evidence, which would be dealt with in witness statements. There appears to have been no appreciation on the part of his solicitors or counsel that the words spoken to Mr Goble amounted to a separate cause of action that needed to be pleaded. In the circumstances, the claimant can hardly be blamed for lacking the knowledge that his lawyers should have had.

103. In the event, the Reply referred briefly to the evidence of Kevin Goble, apparently (although it is not clear) as material to be relied on in support of the claimant's case that

the defendant was suggesting to others that the claimant was having sexual encounters with children.

104. It appears that witness statements (including that of Mr Goble) were exchanged on 17 April 2020, by which time the limitation period for pleading the words spoken to Mr Goble had of course expired.

105. The claimant ceased to instruct his solicitors and counsel in April 2020, and sought the assistance of counsel on a direct access basis. That barrister was not able to act for him after the pre-trial review before Jay J on 21 May 2020, and in August 2020 the claimant instructed Mr de Wilde 'briefly' in specific relation to the alleged publication by the defendant of documents filed in these proceedings, and then in relation to the case as a whole in September 2020.

106. When instructed, Mr de Wilde explained to the claimant the significance of Mr Goble's evidence. That was when the claimant first became aware that the publication to Mr Goble was a separate cause of action that should have been pleaded. Following advice from Mr de Wilde he wrote a letter to the defendant on 9 September 2020. In that letter he said that, having considered Mr Goble's evidence with counsel, he now wished to make a further claim in respect of the words alleged to have been spoken by the defendant to Mr Goble. He proposed that that the various issues to be determined at the trial of preliminary issue should include the alleged Goble publication, and that if the issues were determined in his favour, he would amend to include a claim in respect of that publication.

107. The defendant did not reply to that letter. The claimant then issued an application on 9 October 2020 seeking to amplify his existing witness statements, including that of Mr Goble, inter alia to make clear the precise words alleged to have been spoken by the defendant.

108. That application, as I have explained, was dealt with at the second pre-trial review on 11 November 2020, when I granted relief from sanction in respect of the late service of the further witness statements, and gave leave to adduce them. I ordered the claimant to serve draft Amended Particulars of Claim by 2 December 2020. It was made clear by Mr de Wilde that the claimant sought to rely on the Goble publication, and that he would include it in the draft APOC. As I understood it, he intended that the issue of limitation would then be dealt with at the trial of preliminary issues.

109. The draft amended Particulars of Claim (APOC) were duly served on 2 December 2020. For the first time the claimant pleaded reliance on the Goble publication, rather than simply referring to it in witness statements. He was unable to seek leave to amend in that form until the issue of disapplication of limitation period had been decided, which (by my order of 29 January 2021) was fixed for hearing with the other outstanding issues on 24-25 February 2021.

110. The claimant's position, therefore, is that he took action when he learned of the alleged publication to Mr Goble, by arranging for Mr Goble to provide the gist of his statement to his then solicitors and counsel, that he kept asking his lawyers to make use of Mr Goble's evidence, but that they took no action beyond making references to it in the Reply. As a legally untrained layman, it seems to me that he was in no position to understand what his lawyers ought to have done (i.e. seek leave to amend to rely on the

Goble publication), and it was not until Mr de Wilde was instructed (in early September 2020) that he appreciated the position. That delay, for the full twelve months of the limitation period and some five months beyond it, appears on the face of it (although I emphasise that I have not heard from them) to have been the result of the failure of his legal advisers to take the necessary action to plead the Goble publication.

111. It must be a relevant consideration that the claimant has a putative claim against his legal advisers (see eg *Steedman* at [24]ff). However, in my judgment that is not a route which could offer effective vindication, and it would not assist the claimant in obtaining an injunction against the person who he alleges is responsible for a campaign of vilification against him. At best, it would result in a small award of damages for a lost chance of an award of damages in slander. That would be of very little use to him.

112. As soon as the claimant learned the true position, he immediately informed the defendant that he wished to make a further claim in reliance on the words allegedly spoken by the defendant to Mr Goble, and thereafter served his draft APOC, pleading that publication, in accordance with my order of 11 November 2020. The issue was then argued at the trial of preliminary issues on 24 February 2021. It could not have been dealt with any sooner than it was, because of listing constraints. In that context, it seems to me immaterial that the formal application was not issued until 12 February 2021. Since the November hearing it had been clear that the application would be heard on 24 February 2021, so the precise date of issue of the notice of application was not of importance.

113. It appears to me, in short, that the claimant was eager from the very start to complain of the Goble publication. He did his best to pursue his complaint promptly, and I do not doubt that he has always had a genuine wish to pursue vindication.

114. I turn to the question of balance of prejudice. It is relevant to mention that it has always been part of the claimant's case that the defendant has spoken similar words to a number of people involved in Irish dancing, which is a world where everyone knows everyone else. I have found that it is highly likely that the defendant spoke to a number of other people in the Irish dancing world about alleged sexual misconduct by the claimant.

115. The claimant has now pleaded three separate instances of publication, one of which I cannot find took place in the terms pleaded, although he has abandoned his claims in respect of words allegedly spoken to two publishees, Mr Gaber and Ms Mulcahy.

116. The evidence suggests that Mr Goble, although a friend of the claimant, was affected by what he heard. He said in his evidence that despite the fact that he considered their relationship the same as before, his view of the claimant was affected by the allegations, given that they were made by someone who knew the claimant well. He felt that the claimant would not be fully vindicated (I take it he meant in his eyes) until a judge had ruled the allegations false. The claimant's own position is that when Mr Goble telephoned him to tell him what the defendant had said, he appeared surprised and shocked, and his impression was that Mr Goble felt that if the defendant was confident enough in his allegations to repeat them to one of his best friends, there must be some truth in them. He said that his relationship with Mr Goble had been a very good one, but that he now heard from him much less, and his impression was that Mr Goble felt awkward associating with him in the Irish dancing world.

117. But it is not just a matter of repairing his standing in the eyes of Mr Goble. This is a case which (actionable publication being very limited) must be primarily about injunction rather than damages. (I should say that the defendant gave an undertaking through his solicitors on 26 April 2019, without any admission of liability.) It seems to me that against a background in which damaging statements were plainly made about him by the defendant to many people that cannot be sued upon, because the words used are not known, there would be real prejudice to the claimant if he could not pursue his claim in respect of one of two occasions of actionable publication which he is able to establish.

118. As far as the defendant is concerned, he would lose the protection of the limitation bar. However, he must in any event plead a defence to the Kennedy/McCullough publication, which is in very similar terms. That greatly reduces the prejudice which he will suffer by disapplication of the limitation period (see eg *Maccaba v Lichtenstein* [2003] EWHC 1325 (QB) at [19]. Given the similarity of the words and the context in which they were spoken, any substantive defence that he chooses to plead is likely to be identical in the case of Mr Goble to that pleaded in the case of Messrs Kennedy and McCullough. They would, in other words, be likely to stand or fall together.

119. Moreover, if there is to be a defence of truth, or privilege, it is unlikely to be either unavailable because of the delay in pleading the Goble publication, or to be less cogent than it would have been otherwise, both because there is no reason to suppose that the relevant witnesses are not still available or unlikely to recall such serious matters, and because the Goble publication does not appear to give rise to a need for any evidence which would not already have been required in respect of the car conversation.

120. I therefore conclude that it would be equitable to allow the claim based on the Goble publication to proceed.

MEANING

121. I have to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable person hearing them would have understood the words to bear. The principles for establishing the meaning of words are well known and do not need repetition. They have been re-stated on countless occasions, notably by the Court of Appeal in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130, and more recently by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB); [2020] 4 WLR 25.

122. I have tried to put myself in the position of the ordinary reasonable person hearing the words for the first time. That is easier when the court is considering a newspaper article, or a television programme, or some outpouring of social media; but it is a particularly artificial exercise in a case in which I have had to hear evidence and argument at some length on exactly what was said. Nonetheless, it is the task I have tried to perform. This is absolutely not a case for elaborate analysis. Ultimately, the meaning which I have found the words to bear in each case has been very much the same as the impression I gained when I first read the second witness statements of Messrs Kennedy, McCullough and Goble.

123. I repeat my finding as to the words spoken to Messrs Kennedy and McCullough:

> "Jamie has been grooming young girls on social media so he can stay friendly with them and meet up with them for sex when they reach the age of consent … Several dance teachers have told me that parents have complained that his behaviour has been inappropriate … He has STDs and has been sleeping with hundreds of girls. I shall probably have to tell them."

124. Mr de Wilde maintained reliance on his pleaded meanings. In the case of the Kennedy/McCullough publication, that was:

> "The claimant is guilty of the criminal offence of habitually grooming underage girls via social media. The claimant knows that he has serious sexually transmitted diseases, but is guilty of the criminal offence of recklessly inflicting grievous bodily harm by dishonestly failing to disclose this information about his sexual health to hundreds of women with whom he has been sexually active."

125. I do not think that I should impute to the ordinary reasonable person a knowledge that the claimant's alleged behaviour involved criminal offences. Such a person would in my view regard the alleged behaviour as deplorable and outrageous and might well think that criminality was involved, but that is different from deducing that the claimant was guilty of criminal offences. I think, despite Mr de Wilde's submissions to the contrary, that a legal innuendo would be necessary to make that meaning viable.

126. The defendant (much of whose submissions focussed on what he had intended to convey, rather than on the impact of his words on the ordinary reasonable person hearing them) rightly reminded me that there was a difference between grooming and child grooming, and that I should not select the most serious meaning when less serious ones were available. The most likely reference to grooming, he suggested, would have been as a summary of the claimant's behaviour. The difficulty with that submission in this case was that I found the reference to grooming to be in respect of girls who had not reached the age of consent. I bear in mind also the defendant's reminder that I must consider the words spoken to Messrs Kennedy and McCullough in their context, which is the Car Conversation as a whole, and I do so.

127. I do not think that either party made submissions about the word 'inappropriate', which is a pejorative term now customarily used as a lazy cliché in place of more open or targeted criticism, but I take it in context to impute improper behaviour by the claimant as a teacher.

128. My conclusion is that the words spoken to Messrs Kennedy and McCullough, in their context, meant that

> (1) the claimant had groomed under-age girls by social media with a view to having sex with them once they reached the age of consent;
>
> (2) he had behaved improperly with his girl pupils, as their parents' complaints showed; and

> (3) he had slept with hundreds of girls without telling them that he had sexually transmitted diseases.

129. In the case of Mr Goble, I found that the words spoken were:

> "Jamie has been grooming kids through social media, so you know who you are getting involved with. Elaine Walker has complained about the Fusion Fighters workshop because Jamie has been closely involved with three girls from the camp. I received a statement that he had been inappropriate with some of her dancers."

130. However, only the first sentence of those words is pleaded. The claimant's pleaded meaning of those words is:

> "The claimant is guilty of the criminal offence of habitually sexually grooming underage girls via social media."

131. Mr de Wilde argued that the use of the word 'kids' in the context of 'grooming' implied children below the age of consent. That sense was underlined by the warning to Mr Goble to keep clear of the claimant.

132. The defendant repeated his submission that 'grooming' did not necessarily imply targeting under-age girls. He argued in the context of the Kennedy/McCullough publication that 'young girls' did not by itself imply under age children, and although he did not mention the word 'kids' I take him to have meant to make the same point in relation to the Goble publication. However, I think that the combined effect of the words 'grooming' and 'kids' does have a connotation of children who are under age.

133. My conclusion is that the first sentence of the words which I have found to have been spoken to Mr Goble, which is the extent of the claimant's pleaded complaint, meant that:

> Mr Goble should be careful of getting involved with the claimant, because he had been grooming children through social media.

ACTIONABILITY AT COMMON LAW

134. There is a long established test for actionability at common law, namely that the words complained of should tend to lower the claimant in the estimation of right-thinking people generally: see eg *Gatley* §2.1. It has been given a new name: 'the consensus requirement'.

135. A further threshold requirement was stated by Tugendhat J in *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB), [2011] 1 WLR 1985, where at [96] the judge identified the criterion as being whether the words complained of substantially affect in an adverse manner the attitude of other people towards the claimant, or have a tendency so to do. That formulation was accepted as correct by the Supreme Court in *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2020] AC 612 at [9].

136. As I understood the defendant's position, both in argument and in the consolidated table ordered by Jay J, and updated by my order, he conceded the actionability at common law of the two instances of publication that I have found. I have no doubt that both publications, in the meanings that I have found them to bear, satisfy both requirements, and given the defendant's concession, which was plainly correct, I say no more about this.

ACTIONABILITY *PER SE*

137. As a general rule, slander is not actionable without proof of special damage. No special damage is alleged by the claimant in this case. There have been a number of exceptions to that rule, of which (in the light of s14, Defamation Act 2013) only two remain. The claimant must bring himself within one or other of those exceptions. In my judgment he has brought himself within both.

138. The two remaining exceptions to the general rule are (1) slanders which impute a crime for which the claimant could be made to suffer physically by way of punishment, and (2) slanders which are calculated to disparage the claimant in any office, profession, calling, trade or business held or carried on by him at the time of publication (see *Gatley* §4.2).

139. In the case of the first exception *Gatley*, drawing the authorities together, suggests that the exact offence need not be specified: words imputing a general charge of criminality will suffice, even if they express it in popular or even slang terms. As Nicklin J put it in *Dhir v Saddler* [2017] EWHC 3155 (QB) at [30],

> "The authorities make clear that a slander can be actionable without proof of special damage even where the charge is one of general criminality, providing that, in context, the words impute some offence for which the claimant could be punished with imprisonment (see §4.7 *Gatley*): "The meaning of the words is to be gathered from the vulgar import, and not from any technical legal sense " (*Colman v Godwin (1783) 3 Doug.K.B. 90*, **91** *per* Buller J)."

140. There is in fact an offence of sexual communication with a child (s15A, Sexual Offences Act 2003), but whether or not the offence was committed would depend on the content of the communications rather than the adult's ultimate purpose. The words complained of in respect of the car conversation with Messrs Kennedy and McCullough (knowing transmission of STDs) probably entailed an offence under s20, Offences Against the Person Act 1861. But, as I say, the precise criminality need not be stated, and it seems clear to me in any event that an allegation of child grooming connotes a general charge of paedophile criminality.

141. The second exception owes itself to s2, Defamation Act 1952:

> "Slander affecting official, professional or business reputation.
>
> In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication,

> it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business."

142. 'Calculated' to disparage means 'likely' to disparage: see eg

Starr v Ward [2015] EWHC 1987 (QB) and *Andre v Price* [2010] EWHC 2572 (QB), both cases of claimants who were performers (a comedian and a singer respectively). 'Disparage' is a word which might cover a range of possible seriousness: see Tugendhat J's analysis in *Andre v Price*, where at [98]-[99] the judge set a *Thornton*-style threshold of seriousness for s2 disparagement, holding that liability as a result of a trivial effect on the mind of the publishee could not be imposed consistently with Article 10:

> "[98] … In my judgment, section 2 must be interpreted with a degree of flexibility, but it requires something more than a minimal meaning to be attributed to each of the words in question. A meaning for both words together must be found which reflects the importance of Article 10 rights. It would be inconsistent with Article 10 to impose liability for slander when the effect upon a Claimant's reputation was below a certain threshold.
>
> [99] Whether section 2 is satisfied must be considered not only in the light of the words complained of themselves, but also in the context in which they are spoken. Here, Mr Nicklin emphasises that the publication complained of was to a relatively small number of people, all of them members of the public who were in a studio audience, together no doubt with one or two other people who were there in a professional capacity."

143. On the facts, the judge found that no jury, properly directed, could find s2 disparagement. In this case the publishees are fewer still than in *Andre v Price*, but the words complained of are much more serious, and relate directly to the claimant's business as a teacher and performer of Irish dance. I have no difficulty in concluding that the words complained of in each of the two instances of publication were calculated to disparage the claimant in that business.

SERIOUS HARM

144. Section 1, Defamation Act 2013, introduced the much-litigated statutory requirement of serious harm. By s1(1),

> 1(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

145. In the Supreme Court (*Lachaux v Independent Print Ltd* [2019] UKSC 27, [2020] AC 612, Lord Sumption explained the effect of s1. In his view, the section "require(d) its application to be determined by reference to the actual facts about its impact and not just to the meaning of the words" [12]. He went on:

> "[14] … The reference to a situation where the statement "has caused" serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated."

146. It appears from [21] of the judgment that inferences of fact as to the seriousness of the harm done to a claimant's reputation may be drawn from such considerations as the meaning of the words, the claimant's situation, the circumstances of publication and the inherent probabilities.

147. In answer to the argument that serious harm could be demonstrated only by reference to the inherent tendency of the words, Lord Sumption responded that if that was the case, no substantial change to the law had been achieved by s1. "Suppose", he said at [16], "that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement".

148. *Lachaux* was a libel case. But the s1 serious harm test must apply to slander as much as to libel. Indeed, two of the categories of slander previously actionable without proof of special damage were repealed by s14 of the 2013 Act. Plainly, there was no intention to abolish the remaining categories. Parliament must have envisaged that a slander, actionable without proof of special damage, might cause serious harm to a person's reputation.

149. The impact of s1 on slander claims was considered in a judgment handed down in December 2017, during the hiatus between the Court of Appeal's judgment in *Lachaux* and the decision of the Supreme Court. That was *Dhir v Saddler* [2017] EWHC 3155 (QB), where there were at least 90 publishees of a slander spoken at a meeting. The judge, Nicklin J, observed that Parliament must have envisaged that a slander was capable of causing serious harm to reputation, and so must have thought that serious harm could be caused by the kind of limited publication which usually attends cases of slander. He said this:

> "[54] Whilst the issue of serious harm will always be highly fact specific, it does seem to me that this does rule out the simple proposition that a defamatory publication to, say, a handful of people is incapable of causing serious harm to reputation. In my view, the effect of *Lachaux* is that the requirement is to show serious harm caused to the reputation of the claimant in the eyes of the publishees; not damage to the claimant's reputation in the eyes of people generally. If it were the latter, then almost every slander claim would not be actionable under s1. For the reasons

> I have identified, that cannot have been the intention of Parliament.
>
> [55] In my judgment, the authorities demonstrate that it is the quality of the publishees, not their quantity, that is likely to determine the issue of serious harm in cases involving relatively small-scale publication. What matters is not the extent of publication, but to whom the words are published. A significant factor is likely to be whether the claimant is identified in the minds of the publishee(s) so that the allegation "sticks".

150. The judge considered the various elements that might contribute to an allegation 'sticking'. It was not simply a matter of numbers. However, the percolation or repetition of an allegation through the 'grapevine effect' might be highly relevant to the assessment of serious harm, especially as the more serious the allegation, the more likely it might be to spread. He suggested that the most significant factor in slander cases was whether the defamatory words "really connected" with the claimant in the mind of the publishee, which might depend on the nature of the allegation and the identity of those about whom and to whom the words were published.

151. So I turn to consider the two live instances of publication in this case.

152. In both cases, the words spoken were immensely serious. They could have ended the claimant's career as a teacher and performer of Irish dance. They were made more credible to the publishees by the very fact that the claimant and the defendant had been friends for so long, and by their context, namely the defendant's explanation for the demise of a very close personal and professional relationship. These were matters which the defendant would know about, if anyone did.

153. That was why Conor Kennedy took the allegations seriously and thought that they might be true: he found the allegations of grooming very shocking because of the breach of trust which they revealed, and the allegation of sleeping with girls without disclosing STDs horrified him. It was also why John McCullough could not believe that the defendant would be saying such things if they were not true, and why Kevin Goble was so taken aback and shocked by what he heard.

154. All three publishees, Conor Kennedy, John McCullough and Kevin Goble, regarded themselves as friends of the claimant, as well as of the defendant. The claimant described Kennedy and McCullough as very good friends who had been open and relaxed with each other, and Goble as a very close friend. But all three men were plainly very shocked by the allegations. They each wanted reassurance from the claimant.

155. Mr Kennedy said that he felt reassured after talking to him, but that – despite remaining his friend, and despite believing that the defendant has been waging a campaign to destroy the claimant's reputation and career – it had been hard for his view of the claimant not to be affected by such allegations from someone who was so close to the claimant.

156. Mr McCullough's evidence was that after speaking to the claimant, he did not believe what the defendant had said; yet he would not be completely reassured until the claimant had won the case.

157. Kevin Goble believed after speaking to the claimant that the defendant was acting maliciously with a view to keeping for himself the work that they had done together. He considered that his relationship with the claimant was the same as it was, but that the claimant could not fully vindicated until a judge had ruled that the allegations are false.

158. The claimant himself said, and I accept, that after his very difficult conversation with Conor Kennedy and John McCullough ('the most difficult conversation I have ever had with anyone in my life'), the easy and positive relationship which he had enjoyed with the two men became forced and strained, and that there was lingering discomfort in their interactions for a long time afterwards. However, as time progressed, matters had become more normal.

159. As regards Kevin Goble, with whom the claimant had had a jokey and light-hearted relationship, there was (on the claimant's account, which, as I have said, I accept) no element of humour in the conversation that he had with him. The claimant's impression was that Mr Goble was hesitant about him and about the allegations, because he felt that if the defendant was confident enough to repeat them to one of the claimant's best friends, there must be some truth in them. He was not so unsettled talking with Kevin Goble as he had been with the other men, because he had confided in Mr Goble previously, in general terms, about the defendant's behaviour. However, he and Mr Goble had been used to talking almost daily, and after that conversation he heard much less of him than before. His impression was that Mr Goble felt awkward associating with him in the Irish Dancing world. As what the claimant described as the rumours about him had spread, rumours which he felt were instigated by the defendant's campaign, Mr Goble had understandably not wanted to be tarred with the same brush.

160. It is clear from the claimant's evidence that allegations of a similar kind had been going round the Irish dancing world, which is clearly a small one. But I cannot find that rumours of that kind came from any of these three men. There is no evidence that they passed on the defendant's allegations to anyone else, and I regard it as unlikely that – as friends of the claimant - they would have done.

161. I remind myself that s1 requires the claimant to show serious harm caused to his reputation in the eyes of the publishees. The defendant submits that in the light of the claimant's reassurance of the three men, they did not believe that what he told them was true, and that in consequence his words caused no harm, and certainly not any serious harm.

162. I do not accept that. Matters are never that simple. Even if I take into account the claimant's explanation to the three men and their acceptance of it, it seems to me that those matters did not neutralise the impact of what the defendant said. The evidence shows that they were shocked and troubled by the allegations, especially given that it was the claimant's former close friend who had made them, a man who would have known the truth about the claimant's behaviour, and in that sense the allegations 'stuck' (to use Nicklin J's term). In my view, even though the men each said that having heard the claimant's response, they did not believe the defendant, long term damage has been

done to their relationships with the claimant. Their view of him, which was previously one of respect and admiration, is now tainted by uncertainty and awkwardness. An embarrassment has crept in to friendships which had earlier been relaxed and untroubled. That was clear from the way in which they gave their evidence, and in this respect I give more weight to the impression that the claimant has of his relations with the three men than I do to their evidence, which seemed to me to demonstrate a very decent wish to play down the extent to which matters had changed. In my judgment, the defendant's words have caused serious harm to the standing of the claimant in their eyes, and real damage to their friendships with him. In the small world of Irish dance, that is bound to be a seriously problematic development.

163. But Mr de Wilde maintains that the analysis of s1 conducted by Lord Sumption requires the court to find the cause of action complete, and the reputational impact caused, at the moment of publication. On that footing, the claimant's attempts to reassure his friends just after the critical conversation (in the case of Mr Goble) and the next day (in the case of Conor Kennedy and John McCullough) were irrelevant to the question of the harm that was done.

164. This is a very difficult question. It was argued in the Supreme Court by counsel for Mr Lachaux that it was necessary to construe s1 on the basis that the cause of action was complete on publication, and not on some later date at which 'serious harm' might occur; or else (for instance) it was difficult to reconcile the effect of s1 with that of s8, where Parliament plainly envisaged that a cause of action accrued at the moment of publication. Lord Sumption dealt with that argument at [18] by distinguishing between the damage done to an interest protected by the law, and facts which are merely evidence of the extent of that damage:

> "As an element in the cause of action for defamation, publication does not mean commercial publication, but communication to a reader or hearer other than the claimant. The impact of the publication on the claimant's reputation will in practice occur at that moment in almost all cases, and the cause of action is then complete.
>
> If for some reason it does not occur at that moment, the subsequent events will be evidence of the likelihood of its occurring. In either case, subsequent events may serve to demonstrate the seriousness of the statement's impact …. It does not follow that those events must have occurred before the claimant's cause of action can be said to have accrued. Their relevance is purely evidential."

165. I do not find that passage easy to follow. Lord Sumption appears to be suggesting that the cause of action will in almost every case come into being at the moment of publication. Does that mean that serious harm to reputation must be assessed at that moment, given that there is no cause of action without serious harm? That is what Mr de Wilde's submission entails. Yet some factors relevant to serious harm which occur after publication, such as the percolation of the libel from the publishee to others, may be taken into account after the event in assessing seriousness, to 'demonstrate the

seriousness of the statement's impact'. Lord Sumption envisages that any later developments might serve as evidence confirming the seriousness of the words. But he does not explicitly consider the position where later developments show that the words were less damaging than might initially have been supposed. Suppose that X tells an assembly of people at a meeting that he has evidence that Y has murdered Z, his wife, who has been missing. As they leave the meeting, shocked and appalled, they see Z walking down the street. Can Y still sue on the statement made by X, on the footing that the cause of action was complete on publication and, at that moment, caused serious harm? If not, then a cause of action arguably satisfying s1 would have come into being, only to vanish a moment later, like a firefly on a summer night. Or Z might reappear a day later, or a month, or a year. Would that make a difference, and if so, why? That would entail just the kind of ambient cause of action, drifting in and out of actionability, that Davis LJ envisaged in the Court of Appeal. I hardly think that was what Lord Sumption had in mind.

166. If Mr de Wilde's submission is right, subsequent evidence tending to neutralise words which, in their immediate impact, caused serious harm to a claimant's reputation, must go only to damages, or give rise to an argument of *Jameel* abuse. I would have to disregard the claimant's later attempts to reassure his friends in considering whether or not the defendant's words caused serious harm to his reputation, and in that event I would of course find with greater confidence that they did. But notwithstanding the difficulties which appear to flow from the proposition that the impact of publication on reputation will usually occur at the moment of publication, Lord Sumption does explicitly envisage evidence of subsequent events having an effect on the assessment of seriousness, and for me to shut out of consideration the claimant's later attempts to reassure his friends would seem to be wrong. However, given my finding that there was serious harm in any event, I do not need to found my conclusion on Mr de Wilde's submission as to the effect of Lord Sumption's judgment.

CONCLUSION

167. I have determined issues of publication, meaning, actionability and serious harm, and I have given reasons for a allowing the claim based on the Goble publication to proceed. There will have to be a further hearing at which a number of consequential matters will fall to be decided. Apart from costs, they will include the terms on which the claimant should have permission for his APOC (if he satisfies me, having heard the defendant, that he should), and directions for service of an amended Defence and for the future conduct of the proceedings.